

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ESTEP KYLER,

Petitioner,

v.

**Civil Action No. 5:07cv52
(Judge Stamp)**

**JOYCE FRANCIS, UNITED STATES
PAROLE COMMISSION,**

Respondents.

OPINION/REPORT AND RECOMMENDATION

The petitioner initiated this § 2241 habeas action on April 20, 2007. Because the petitioner failed to pay the required filing fee or file a request to proceed as a pauper, on August 29, 2007, the Court issued an Order giving the petitioner 10 days to show cause why his case should not be dismissed for the failure to prosecute.

Despite two notices by the Court, a review of the file as of this date shows that the petitioner has not paid the required filing nor filed a request to proceed as a pauper. Further, the petitioner has not requested additional time to do so, nor otherwise explained the reasons for non-compliance. Therefore, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, it is the undersigned's recommendation that the petition be **DISMISSED without prejudice** for the failure to prosecute.

Within ten (10) days after being served with a copy of this Opinion/Report and Recommendation, any party may file with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections shall also be submitted to the Honorable Frederick P. Stamp, Jr., United

States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket. The Clerk is further directed to provide copies of this Opinion/Report and Recommendation to all counsel of record, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: October 18, 2007.

/s/ John S. Kaull

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE